



Board of Adjustment



Agenda Numbers: 4, 5, & 6
Case Numbers: BA-20100004/ZA-80122
BA-20100005/ZA-80123
BA-20100006/ZA-80124
Hearing Date: July 7, 2010

Appellant: Max & Daisy Ortega
1612 Shadyside Dr. SW
Albuquerque, NM 87105

Agent: Richard Mora
1612 Shadyside Dr. SW
Albuquerque, NM 87105

Applicant: Max & Daisy Ortega
1612 Shadyside Dr. SW
Albuquerque, NM 87105

Agent: Richard Mora
1612 Shadyside Dr. SW
Albuquerque, NM 87105

Site Location: 1612 Shadyside Dr. SW

Zone Designation: R-1 Single-Family Residential

Recommendations: Deferral

VICINITY MAP

Summary: These appeals concern the Zoning Administrator's denial of conditional use approval to allow a mobile home for a medical hardship in addition to a single-family dwelling for three (3) years, as well as two (2) requests to vary both the required rear yard setback distance and the required separation distance between the subject mobile home and an accessory building. These matters were deferred by the Board of Adjustment in April at the request of the appellant in order to obtain legal guardianship and relocate the mobile home. However, as of the publication deadline, staff is unaware of any steps that have been completed in order to accomplish these tasks.

Staff Contact: Brennon Williams, Zoning Administrator

Attachments:

1. Appeal applications
2. BA's Notices of Decision (April 12, 2010)
3. Material presented in opposition to the appeals
4. ZA's Notices of Decision
(Jan. 19, 2010, July 21, 2009, Jan. 20, 2009, Nov. 21, 2008, & Oct. 21, 2008)
5. Original applications with provided site plan
6. Applicant's requests for deferral
7. Notice of Decision for ZA-201024
8. Material presented in opposition to the ZA requests
9. Agency comments for ZA applications
10. Site photographs, aerial photograph, zone atlas page

BA-20100004/ZA-80122

Richard Mora, agent for Max & Daisy Ortega, appeals the Zoning Administrator's denial of a conditional use to allow a mobile home for a three (3) year period in addition to an existing single-family dwelling for a medical hardship on Tract K1, Shadyside Addition, located at 1612 Shadyside Dr. SW, zoned R-1, and containing approximately .204 acres. (N-12) (Original request submitted by Richard Mora, agent for Max & Daisy Ortega) (DEFERRED FROM THE APRIL 7, 2010 HEARING)

BA-20100005/ZA-80123

Richard Mora, agent for Max & Daisy Ortega, appeals the Zoning Administrator's denial of a variance of 8 feet to the required rear yard setback distance on Tract K1, Shadyside Addition, located at 1612 Shadyside Dr. SW, zoned R-1, and containing approximately .204 acres. (N-12) (Original request submitted by Richard Mora, agent for Max & Daisy Ortega) (DEFERRED FROM THE APRIL 7, 2010 HEARING)

BA-20100006/ZA-80124

Richard Mora, agent for Max & Daisy Ortega, appeals the Zoning Administrator's denial of a variance of 11.5 feet to the required separation distance between a mobile home and an accessory building on Tract K1, Shadyside Addition, located at 1612 Shadyside Dr. SW, zoned R-1, and containing approximately .204 acres. (N-12) (Original request submitted by Richard Mora, agent for Max & Daisy Ortega) (DEFERRED FROM THE APRIL 7, 2010 HEARING)

BACKGROUND

The Requests

The appellant is requesting that the Zoning Administrator's determinations in denying a request for conditional use approval to allow a mobile home for a medical hardship, as well as the denial of two variance requests – one for encroachment of the mobile home into the rear yard setback area and the other for its proximity to an accessory building – be overturned.

The Property

The subject site is located at 1612 Shadyside Dr. SW, zoned R-1, and is approximately .204 acres in area. The property is currently developed with the subject mobile home, a single-family dwelling, and a detached garage.

The Hearings

The original requests were presented at the Zoning Administration hearings held in October 2008, November 2008, January 2009, July 2009, and January 2010. With the exception of the first and last hearings, the matters were deferred each time to allow the applicant additional time to properly relocate the mobile home on the property as required by a Conditional of Approval from a prior request, ZA-20124 (Attachment 5). Throughout the entire process, the agent – Richard Mora – indicated that the owner wished to undertake the necessary actions, but was either unable to reserve the time necessary to complete the tasks or was confused about all of the steps that would need to be taken in order to bring the property into compliance. Throughout the process, several neighbors testified that the continued use of the mobile home was believed to be detrimental to the neighborhood and questioned the use of the mobile home as a perceived second dwelling on the lot, rather than for the indicated use.

The Decision

Ultimately, the Zoning Administrator determined that the owner/agent had not made significant progress to correct the existing issues, nor had the criteria for approval of the conditional use or variance requests been met.

APPLICABLE REGULATIONS

Comprehensive Zoning Ordinance of Bernalillo County.

Section 9. R-1 Single-Family Residential Zone.

- A. The regulations set forth in this section or set forth elsewhere in this ordinance, when referred to in this section, are the regulations in the R-1 Residential Zone. The purpose of this zone is to provide for the development of single-family homes on lots not less than three-quarters [of an] acre in area, except that where community water and sewer facilities are made available, the lot size may be reduced consistent with development densities in the Albuquerque/Bernalillo County Comprehensive Plan. The regulations provide for the health, safety and welfare of the residents.
- B. Use Regulations. A building or premises shall be used only for the following purposes, all uses customarily incidental to the building or premises shall be maintained on site:
1. Prohibited Uses. The following uses are prohibited in this zone:
 - a. The open storage of inoperative vehicles or auto parts;
 - b. The open storage of trash or junk;
 - c. The open storage of large appliances;
 - d. Any use not designated a permissive use or conditional use in this zone, unless otherwise authorized by this Code; or
 - e. Any use not recognized as customarily incidental to a permitted use in this zone.
 2. Permissive Uses:
 - a. Agricultural activity, including truck gardening and nurseries, fur bearing animal farm, the raising of poultry or rabbits, dairy farming, livestock grazing, feeding, and the raising of livestock on lots containing three acres or more. On lots of less than three acres, there shall be at least 10,000 square feet of lot area for each cow or horse, and/or at least 4,000 square feet of lot area for each sheep, pig, or goat, provided that any building, pen, or corral where such animal is located is at least 20 feet from any existing dwelling unit. Stands for the display or sale of home-raised agricultural products, including poultry or rabbits raised on the premises.
 - b. One single-family dwelling or H.U.D. Zone Code II manufactured home per lot.
 - c. Accessory building, structure, or use customarily incidental to the above uses, such building or structure shall be limited to an area of 600 square feet or less.
 - d. Noncommercial library, museum, and art gallery.
 - e. Recreational vehicle or boat storage in the rear yard when such recreational vehicle or boat is not to be used as accessory living quarters, and is not connected to utilities, other than temporarily to a source of electricity. Recreational vehicle used for dwelling purposes served only by electricity for lighting purposes, the use of such recreational vehicle shall be limited to a maximum of two weeks in any calendar year.
 1. In the event where rear yard access is not available, outside parking in the front yard is allowed, provided:
 - (a) The body of the recreational vehicle or boat is at least 11 feet from the front property line.
 - (b) No part of the unit extends onto the public right-of-way.
 - (c) A corner lot is always deemed to have reasonable access to the rear yard; a fence or wall is not necessarily deemed to prevent reasonable access.
 - f. Signs not exceeding eight square feet in area pertaining to the lease, hire, or sale of a premises or sale of home-raised products, provided there shall be no more than one such sign on each lot and provided further that, if illuminated, the source of such illumination shall be nonoscillating and nonflashing.
 - g. Parking incidental to uses permitted in this zone, provided all vehicles which are not parked inside a building are operative and are not wholly or partially dismantled.
 - h. Home occupation.
 - i. Concealed Wireless Telecommunications Facility, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - j. Wireless Telecommunications Antenna located on a public utility structure, provided that it satisfies the requirements of section 22.5 of this ordinance.
 - k. Amateur Radio Antenna/Tower up to 65 feet as measured from grade.
 - l. Garage or yard sale, provided:
 1. No more than four events are allowed at a given dwelling in any calendar year. The duration of the garage or yard sale shall not exceed three consecutive days.

2. No items shall be purchased for a garage or yard sale for the purpose of resale; items shall be of the type normally accumulated by a household.
 3. One non-illuminated, on-premise sign, not exceeding four square feet in area shall be permitted. The sign shall pertain to the garage or yard sale only and shall be permitted only for the three-day period of the sale.
3. Conditional Uses. The following uses may be permitted if approved by the Zoning Administrator in accordance with the procedures and under the conditions set out in the administrative Section of this ordinance with additional requirements deemed necessary to safeguard the best interest of the adjoining property, neighborhood and the community.
- a. Accessory building or structure in excess of 600 square feet in area and incidental to the uses listed under Section 7.B.1. and 7.B.2.
 - b. Amateur Radio Antenna/Tower 65 to 100 feet as measured from grade.
 - c. Church and incidental facilities.
 - d. School.
 - e. Day Care Center.
 - f. Family Day Care Home.
 - g. Temporary festivals, circuses, carnivals or activities in a tent, provided that the use or activity meets the following requirements:
 - (1) The minimum lot size per use or activity shall be five acres.
 - (2) All required parking shall be located on the same site with the activity or use.
 - (3) The use or activity shall be at least two miles from the nearest conforming residential use.
 - (4) Prior approval of the proposed use or activity must be obtained from the County Sheriff, County Fire Department, County Environmental Health, County Public Works, City of Albuquerque Air Pollution Control, and Albuquerque Metropolitan Arroyo Flood Control Authority or their authorized representative.
 - (5) The hours of operation, shall be between 6:00 a.m. and 8:00 p.m. This includes the time of erection and dismantling.
 - (6) The use or activity shall be limited to three days in one calendar year.
 - (7) No permanent structures shall be erected.
 - (8) Temporary fencing may be erected, and shall be removed within 24 hours after the activity.
 - h. Real estate sales office and real estate signs exceeding the limitations in Subsection 8.B.(1).f. above in connection with a specific development for a period of not more than two years.
 - i. Recreational facility (nonprofit) such as swimming pools or tennis clubs on sites containing not less than one acre.
 - j. Temporary storage building or yard for equipment, material or activity incidental to a specific construction project but not to exceed one year, unless the time is extended by the Zoning Administrator.
 - k. Mobile home used as a dwelling (with connections to any utilities) during construction of a dwelling on the same premises, provided such use shall be limited to a maximum period of 24 months.
 - l. One mobile home for a three-year period in addition to an existing single-family dwelling or mobile home on a lot provided it complies with the following requirements:
 - (1) The mobile home may be used only by members of the immediate family for the purpose of providing assistance to those members of the family who are elderly, ill, mentally or physically disabled as attested by a licensed physician.
 - (2) The mobile home shall be connected to water and sewage disposal facilities approved by the Department of Environmental Health.
 - (3) The mobile home must be placed on the property in conformance with the setback requirements and located at least 15 feet from any structures on the same or on adjoining property.
 - (4) Placement of a mobile home on the property will not seriously conflict with the character of the area or be detrimental to the values of surrounding properties.
 - m. Nonprofit animal facility.
 - n. Park.
 - o. Home occupation where the business includes visits to the site from clients, customers, patients, patrons, or similar individuals. Such home occupations may allow for employment of one non-family member and may be approved for a period of time not to exceed three years.

- C. Height Regulations. Buildings and structures shall not exceed 26 feet or 2 1/2 stories in height, except as provided in The Supplementary Height and Area Regulations Section of this ordinance.
- D. Area Regulations:
1. Minimum Lot Area and Lot Width. Every lot shall have a minimum area of not less than three-quarters [of an] acre and a minimum lot width of 60 feet, except that where community water and sewer facilities are available, the lot area may be decreased to 8,000 square feet if located in the Developing, Established or Central Urban Areas, or 14,520 square feet if located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan.
 2. Front Yard.
 - a. There shall be a front yard having a depth of not less than 20 feet except as provided in the Supplementary Height and Area Regulations Section of this ordinance.
 - b. Where lots have double frontage, the required front yard shall be provided on both streets.
 3. Side Yard:
 - a. Except as hereinafter provided in the following paragraph and in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a side yard on both sides of a building the aggregate width of which shall be not less than 14 feet, provided, however, that neither such yard shall be less than six feet in width.
 - b. Wherever a lot of record, at the effective date of this ordinance, has a width of less than 60 feet, each side yard may be reduced to a width of not less than ten percent of the width of the lot, but in no instance shall it be less than three feet.
 4. Rear Yard. Except as hereinafter provided in the Supplementary Height and Area Regulations Section of this ordinance, there shall be a rear yard having a depth of not less than 15 feet.
- E. Parking Requirements. Off-street parking for all uses must be provided in accordance with the regulations set forth in the Off-street Parking, Loading and Unloading Regulations Section of this ordinance.

Section 24.A.2. Administration. Zoning Administrator. Powers and Duties.

- h. Investigation of Applications:
- (1) Investigate all applications for variances from the height, area, parking or density regulations of this ordinance, and to grant such applications to the extent necessary to permit the owner reasonable use of his land in those specified instances where there are peculiar, exceptional, and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.
 - (2) Investigate all applications for an extension of the time limitations authorized by the Nonconforming Use Regulations Section of this ordinance or for an expansion of up to 25 percent of the original floor area for residential uses in residential zones, and to grant such applications if the use does not seriously conflict with the character of the surrounding area and in case of expansion of the use the site is adequate in size and shape to accommodate such expansion and the expansion does not increase the number of dwelling units on the lot or in any structure.
- i. Investigate all applications for conditional use permits authorized in this ordinance, and grant such applications if he finds:
- (1) The site for the proposed use is adequate in size and shape to accommodate such use, and all yards, open spaces, wall and fences, parking, loading, landscaping and other features required by this ordinance to adjust such use to the land use pattern in the neighborhood.
 - (2) That the site for the proposed use can be developed in such a manner that undue traffic congestion or hazards will not be created.
 - (3) That the proposed use will have no adverse effect on the neighborhood or seriously conflict with the character of the area.
 - (4) That any conditions are deemed necessary to protect the public health, safety, and general welfare. Such conditions may include requirements relative to:
 - (a) Open space and buffers.

- (b) Walls and fences.
- (c) Surfacing of parking areas.
- (d) Location of points of vehicular egress or ingress.
- (e) Signs.
- (f) Landscaping and maintenance thereof.
- (g) Noise, vibration, odor and health hazards.
- (h) Such other conditions as will make possible the development of the county in an orderly, efficient manner, and in conformity with the intended purpose of this ordinance.

Agency Comments

Comments received for this request from the Bernalillo County Environmental Health Department stated that proper connection to municipal water and sewer services for both units is necessary, as only one account currently exists for the property. The Bernalillo County Public Works Division indicated that compliance with the county's Flood Damage Prevention Ordinance would be necessary.

INFORMATION SUBMITTED FOR THE APPEAL

Although the appellant does not directly indicate their reasons for the appeals, it is noted that once the agent (Mr. Mora) obtains legal guardianship, he states that he will "comply with the County's request" relative to the setback and separation issues. However, he also notes that the subject mobile home has been on the site for over 30 years, that there are other lots in the neighborhood with "less than satisfactory property conditions", and provides a petition of support from area residents.

Analysis of Submitted Materials

Beginning back in October 2008, the criteria for these requests has never been addressed by the owner in an attempt to justify the continued placement of the mobile home on the property. It is not uncommon for these types of requests to be deferred in an effort to allow an owner or their agent additional opportunity to address the various standards affecting the proposals, but deferral without action does not facilitate favorable decisions. Obviously, an applicant's inability to meet the criteria will result in the denial of any such request, but for this situation, the agent continues to indicate that the variance issues will be rendered unnecessary once the unit is properly relocated. As such, only the conditional use proposal would be necessary, and based on the information provided for that request, it appears likely that the standards for approval could be accomplished.

Analysis Summary

CONDITIONAL USE

CRITERIA	APPEAL INFORMATION	STAFF ANALYSIS
Property is adequate in size & shape?	- This issue has not been addressed in the materials provided for the appeal.	- The existing .204 acres of the subject site appears to be sufficient to easily accommodate the mobile home, but its current location within the required rear yard setback area and within 15 feet of an accessory building causes the proposal to fall short of the established standards for approval.
Property can be developed to avoid traffic congestion/hazards?	- This issue has not been addressed in the materials provided for the appeal.	- The existing area of the site appears to be adequate to allow for proper ingress, egress, and off-street parking requirements. No adverse comment or concern about possible traffic problems was determined by the Public Works Department for this request.
Use will not be detrimental to surrounding properties?	- This issue has not been addressed in the materials provided for the appeal, other	- As the intent of the zoning ordinance is to provide for orderly development and help in stabilizing

	than a written statement from the agent indicating that he disagrees with the county's determination.	the value of property. Noncompliance with the applicable standards results in uses that are detrimental to the neighborhood, as well as the county.
Mobile home will not conflict with character of the area or be detrimental to value of surrounding property?	- This issue has not been addressed in the materials provided for the appeal, other than a written statement from the agent indicating that he disagrees with the county's determination.	- As noted above, noncompliance with all minimum standards for development is contrary to the intent of the regulations and results in denial of the proposal.
VARIANCE CRITERIA	APPEAL INFORMATION	STAFF ANALYSIS
Property possesses exceptional, peculiar, and unusual characteristics?	- This issue has not been addressed in the materials provided for the appeal.	- The property appears to be similar to others in the neighborhood and immediate area.
The reported unique characteristics are unique to the subject site?	- This issue has not been addressed in the materials provided for the appeal.	- The property appears to be similar to others in the neighborhood and immediate area.
The proposed variance is limited in scope only to the extent to allow the owner reasonable use of the land?	- This issue has not been addressed in the materials provided for the appeal.	- The property appears to be similar to others in the neighborhood and immediate area.

CONCLUSION

The Zoning Ordinance authorizes the Board of Adjustment to hear and determine appeals from the decisions of the Zoning Administrator in denying requests for both conditional use permits authorized by the ordinance, as well as variances to particular standards. The agent's continuing reference to bringing the property into compliance – including relocation of the mobile home on the property, thereby negating the need for the setback and separation variances, and thus further improving the chances for approval of the conditional use request – seems to be feasible. It should also be noted that this solution is consistent with the county's desire to not only allow the owner use of the needed mobile home, but bring the property into compliance with the applicable zoning standards. However, with no evidence or indication that these reported actions can (or will) take place as expeditiously as possible, staff respectfully submits these matters to the BA with the following recommendations:

RECOMMENDATIONS

Denial of BA-20100004/ZA-80122, thereby upholding the previous determination of the Zoning Administrator;

Denial of BA-20100005/ZA-80123, thereby upholding the previous determination of the Zoning Administrator; and

Denial of BA-20100006/ZA-80124, thereby upholding the previous determination of the Zoning Administrator.

Brennon Williams
Zoning Administrator